

1 JEAN E. WILLIAMS,  
2 Deputy Assistant Attorney General  
3 SETH M. BARSKY, Chief  
4 S. JAY GOVINDAN, Assistant Chief  
5 RICKEY D. TURNER, Senior Trial Attorney  
6 U.S. Department of Justice  
7 Environment and Natural Resources Division  
8 Wildlife and Marine Resources Section  
9 999 18<sup>th</sup> Street  
10 South Terrace, Suite 370  
11 Denver, Colorado 80202  
12 (303) 844-1373  
13 rickey.turner@usdoj.gov

14 Attorneys for Defendants

15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE DISTRICT OF ARIZONA**

17 WILDEARTH GUARDIANS,

18 Plaintiff,

19 v.

20 UNITED STATES FISH AND  
21 WILDLIFE SERVICE and UNITED  
22 STATES FOREST SERVICE,

23 Defendants.

24 CASE NO. 4:13-cv-151-RCC

25 **DEFENDANTS' MOTION TO CLARIFY**  
26 **[EXPEDITED REVIEW REQUESTED]**

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1           Pursuant to Federal Rules of Civil Procedure 60(a) and 59(e), Defendants hereby  
 2 move the Court to clarify its September 11, 2019 Order, ECF No. 89. More specifically,  
 3 Defendants respectfully request that the Court clarify the breadth of its injunction order.  
 4 Defendants respectfully submit that the order enjoining timber management activities in  
 5 Region 3 should apply only to the six forests that operate under the 2012 biological  
 6 opinions (“2012 BiOps”), and not apply to the five forests that have already completed  
 7 reinitiated consultation and are operating under new BiOps. In support of this request,  
 8 Defendants state as follows:

9           1. The Court found the claims related to five of the 11 disputed BiOps to be moot. *See*  
 10           ECF No. 89 at 13:

11           The Court previously ruled that Plaintiff’s claims as they relate to five of the  
 12 original eleven disputed BiOps are now moot: those pertaining to the Kaibab,  
 13 Prescott, Apache-Sitgreaves, Coconino, and Coronado national forests. (*See*  
 14 Doc. 62-1 at 4, n.3; Doc. 70 at 3, 4; Doc. 76.) Therefore, the Court addresses  
 15 only the remaining six BiOps: the March 30, 2012 BiOps for the Lincoln, Santa  
 16 Fe, Cibola, and Carson national forests, and the April 30, 2012 BiOps for the  
 17 Tonto and Gila national forests.”

18           2. The Court then found the remaining six 2012 BiOps (Lincoln, Santa Fe, Cibola,  
 19 Carson, Tonto, and Gila) to be invalid for failing to adequately address the Mexican  
 20 spotted owl’s recovery as part of the overall jeopardy analysis. *See* ECF No. 89 at 20-  
 21 24.

22           3. As a remedy, the Court stated “that halting the USFS timber management actions  
 23 under the 2012 BiOps until the conclusion of a formal consult and the issuing of  
 24 superseding BiOps is appropriate. The Court will therefore grant an injunction of  
 25 USFS timber management actions in Region 3 National Forests and order Defendants  
 26 to reinitiate formal consultation.” *See* ECF No. 89 at 38; *see also id.* at 39 (“USFS  
 27 timber management actions in Region 3 national forests must cease pending formal  
 28 consultation.”).

29           4. Due to the Court’s reference to “Region 3 national forests,” Defendants recognize

1 that the Court's order could be interpreted to enjoin all timber management activities  
2 throughout Region 3 – *i.e.*, in all 11 forests in Region 3, but such a reading would be  
3 inconsistent with the Court's ruling that the Court lacked jurisdiction over Plaintiff's  
4 challenges to the 2012 BiOps for six of those forests. Defendants therefore request  
5 clarification that the Court's injunction *pertains only to the six forests in Region 3*  
6 (*Lincoln, Santa Fe, Cibola, Carson, Tonto, and Gila*) that operate under the 2012  
7 BiOps.

8 5. Defendants reserve the right to seek further relief under Fed. R. Civ. P. 60(a) and  
9 59(e) as the Forest Service continues reviewing the potential implications of the  
10 Court's order on specific management actions.

11 Dated: September 17, 2019

12 Respectfully Submitted,

13 JEAN E. WILLIAMS,  
14 Deputy Assistant Attorney General  
15 SETH M. BARSKY, Section Chief  
16 S. JAY GOVINDAN,  
17 Assistant Section Chief

18 /s/ Rickey D. Turner, Jr.  
19 RICKY D. TURNER, JR.  
20 Senior Trial Attorney  
21 U.S. Department of Justice  
22 Envnt. & Natural Resources Division  
23 Wildlife & Marine Resources Section  
24 999 18th Street  
25 South Terrace, Suite 370  
26 Denver, CO 80202  
27 Telephone: (303) 844-1373

28 *Attorneys for Defendants*

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

## WILDEARTH GUARDIANS,

CASE NO. 4:13-cv-151-RCC

Plaintiff,

V.

UNITED STATES FISH AND  
WILDLIFE SERVICE and UNITED  
STATES FOREST SERVICE,

## CERTIFICATE OF SERVICE

## Defendants.

I hereby certify that on September 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Rickey D. Turner, Jr.  
**RICKEY D. TURNER, JR.**